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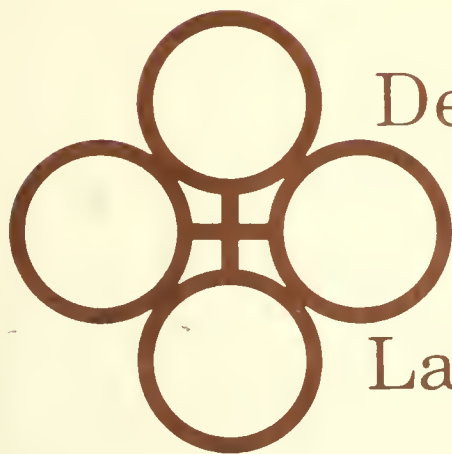
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MONTANA WORKING WOMAN: YOUR JOB RIGHTS

Department of Labor & Industry
David E. Fuller, Commissioner

Labor Standards Division
Dick Kane, Administrator

Women's Bureau
Joan A. Duncan, Chief

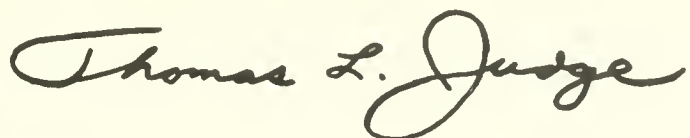
Written and compiled for publication by:
Joan A Uda, Attorney

GOVERNOR'S STATEMENT

If you are an employed woman or are looking for work, you may not be aware of the rights you are guaranteed under Montana law. During the past decade, Montana has seen many progressive changes in the employment status of women and in the laws relating to women and employment. These changes are summarized in this booklet.

We have attempted to compile, in one place, a comprehensive cross-section of information for Montana's working women. Of course, no brief publication could cover everything a working woman needs to know, but we have at least provided general guidance and suggested where to find more information about specific problems.

Montana has come a long way in improving the employment status of women. We hope this booklet will prove to be another positive step in this direction.

A handwritten signature in cursive script that reads "Thomas L. Judge". The signature is written in a dark ink and is centered on the page.

INTRODUCTION

The purpose of this booklet is to help you, the reader, learn more about your rights as a job seeker, an employee, and ultimately as a retired person. Women have always been a valued and productive part of Montana's working population, a role which increases each year. This booklet is one of numerous efforts in recent years to assist women in meeting these growing challenges and responsibilities.

Laws relating to employment change frequently through legislation, agency rule-making and court decisions; thus, everything in the booklet is subject to change, sometimes very rapidly. As of the date of printing, all information in the booklet is correct to the best of our ability to make it so.

This booklet was prepared by Joan A Uda, an attorney under a contract with the Women's Bureau of the Department of Labor and Industry. The Women's Bureau works to establish in Montana an atmosphere that will allow women to contribute to society according to their fullest possible potential, through increased awareness of job opportunities and elimination of sexual barriers to employment. Numerous individuals and agencies have assisted by reviewing and commenting on the manuscript, and I would like to take this opportunity to thank **each** one for **their** time and patience in helping.

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Employment Security Division
Human Rights Division
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Personnel Division

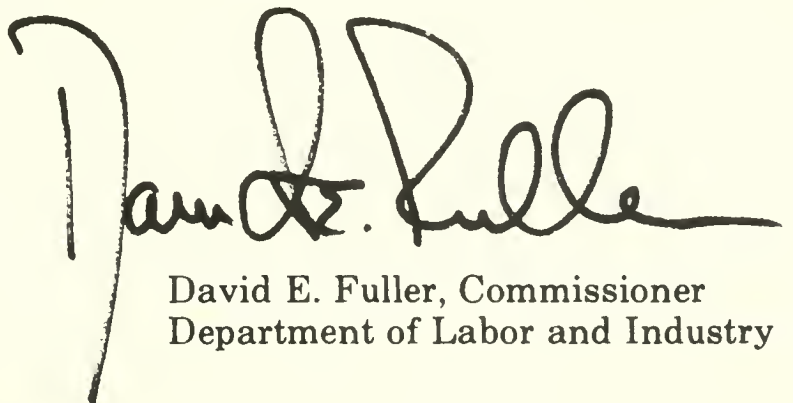
Department of Revenue

Department of Social and Rehabilitative Services

U.S. Department of Health, Education and Welfare

Social Security Administration

I hope that you will find this booklet informative and useful. If so it will serve its purpose well.

A large, stylized handwritten signature in black ink, reading "David E. Fuller". The signature is written in a cursive, flowing style with a large initial "D" and "F".

David E. Fuller, Commissioner
Department of Labor and Industry

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MONTANA WORKING WOMAN: YOUR JOB RIGHTS

CHAPTER ONE: BACKGROUND AND GENERAL INFORMATION

A. Recent Changes in the Law

In the past twenty years, Montana and federal law relating to employment has changed a great deal. Many of these changes protect both women and men. However, a number of changes have occurred which give women new and greater protections under the law in getting and keeping jobs, in safeguarding working conditions and in gaining benefits and promotions.

Montana's 1972 Constitution, for example, provides a very broad "equal protection" clause which specifically prohibits using sex as a basis for discriminating against women in employment, as in other areas:

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas. [Art. II, § 4.]

Since adoption of the new constitution, many of Montana's statutes have been revised to eliminate preferences for either sex, so that men and women are to be treated as equals by and under the law.

Montana has also made a strong statement of public policy in favor of employment opportunities for women which will allow women to "contribute to society according to their fullest possible potential" [§ 39-7-101, MCA 1978].

Montana's Human Rights Act and Governmental Code of Fair Practices provide additional and more specific rights and protections for Montana working women, Title 49, chapter 2 and 3, MCA 1978. In general, these laws prohibit employers, employment agencies, unions, and anyone else involved in the employment process from discriminating against a person because of that person's sex, age, race, color, creed, marital status, religion, national origin, or physical or mental handicap, unless that factor is a "bona fide occupational qualification (BFOQ)."

An example of a "bona fide occupational qualification" might be that a model for women's swim suits is female. In this example, however, though sex may be a BFOQ, race would not. The BFOQ exception is very narrow so that it cannot be used as a pretext to keep individuals out of jobs for which they are fully qualified. For example, it is **not** a BFOQ that a sportscaster be a man just because male or female audiences prefer to hear a male voice, or because the men in the office are "uncomfortable" working with a woman.

B. Why You Need to Know Your Job Rights

The law has changed greatly, but many attitudes and practices have not. Women still face substantial problems in matters such as getting good jobs, getting paid what a man might for the same work, or getting deserved promotions.

Montana women, like women elsewhere in the United States, continue to enter the labor force in unprecedented numbers. In 1977, women made up 41.2% of the total non-agricultural workers in Montana. That is a gain of more than 3% in three years, slightly more than 1% a year. Nationwide, the number of women in the work force reached 50% in 1978.

However, the salary difference between men and women is still widening, not closing. In 1955, women's earnings were 63.9% of men's; in 1978, women's earnings were only 61% of men's.

Knowing your rights can help to close that gap. To make that knowledge count, however, you must be willing to act on it.

C. Purpose of This Booklet

A right not acted upon is worthless. Rights not asserted can be lost. Asserting rights, however, is almost always time-consuming and is sometimes expensive. It generally requires courage, patience and endurance—not necessarily in that order.

It is also usually worth the effort, but each person must make that decision for herself.

The purpose of this booklet is to familiarize you with your basic job rights, to explain some of the things you can do if you believe those rights are being violated, and to suggest where you can go for assistance. It can also serve as a quick reference for basic questions you might have about pensions, minimum wage, maternity leave and many other work-related matters.

D. The Role of Administrative Agencies

Administrative agencies are arms of the executive branch of government. Agencies are called: departments, divisions, bureaus, commissions, boards, and other similar names. Many complaints or grievances about job-related matters that cannot be settled by a supervisor, personnel officer, or other person on the job can be filed for action with the proper agency. Which agency to contact depends upon your specific complaint or grievance.

For example, if you believe you have been discriminated against on the job just because you are a woman, you should contact the Montana Human Rights Division, Department of Labor and Industry, Suite 300, Steamboat Block, 616 Helena Avenue, Helena, Montana 59601 [(406) 449-2884]. However, if you believe you are not being paid fairly for your overtime, you would contact either the Montana Labor Standards Division, Montana Department of Labor and Industry, 35 South Last

Chance Gulch, Helena, Montana 59601 [(406) 449-5600] (state complaint), or the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210 (federal complaint), depending upon whether your job is covered by state or federal law.

E. Time to Act

It is extremely important not to delay in filing a job-related complaint or grievance, because many such matters have a relatively short filing limitation. Many such limitations are 180 days, and some are as short as 30 to 90 days.

F. Information You Need

If you believe you are being treated unlawfully in some matter related to your job, or to your efforts to get a job or job training, you need: (1) The name of the agency to contact for help; and (2) as much information as possible about the actions you believe are improper. This information includes a careful and accurate statement of the facts as you know them, and any supporting information such as documents (forms, memos, letters, official notices or decisions, and other written items), names of persons who have first-hand knowledge of the facts, and your own detailed and accurate record of events, including dates, times, places, persons present, and other specific facts.

The agency which handles your type of problem will tell you exactly what they need from you. Try to follow their instructions and suggestions very carefully. This does not guarantee success, but it helps.

G. Validity and Proof

Just believing that you have been treated unfairly does not necessarily mean that any employment rights law has been violated, although it may. Also, as in many other areas of law, being certain that someone has violated your job rights is very different from being able to prove it. At any time when you seriously believe or suspect that your job rights are being violated, keep a record of dates, times, places, names of persons involved or who know directly about what happened, and your version of what happened. Also keep any relevant letters, forms, notices or other documents or paperwork that may help support your version of what happened.

H. Retaliation

One of the least pleasant aspects of enforcing job rights is the possibility of retaliation by an employer, fellow workers or others. Retaliation is, generally, the practice of “getting even” with an employee because the employee has filed a complaint or has in other ways asserted her own or others’ employment rights.

The Montana Human Rights Act, like Title VII of the 1964 Civil Rights Act, the Equal Pay Act of 1963, and others, prohibits certain types of retaliation.

For example, the Montana act provides that it is an unlawful discriminatory practice “for a person to discharge, expel, blacklist, or otherwise discriminate against an individual” because the individual has opposed any practices forbidden by the act, or because she has filed a complaint, testified or participated in any manner in investigations or proceedings under the act [49-2-301, MCA 1978.]

Complaints about retaliation should be made to the agency with which your original complaint was filed, and must be documented in much the same way.

The value of the retaliation complaint is that it tells the agency to which you originally complained that you are being punished for exercising your rights, and some agencies can and will act more quickly on a retaliation complaint than on an original complaint. It also tells the employer or others that you do not intend to give up and that they may face even more serious penalties for their efforts to retaliate. In some cases it may also give you some informal protection from further retaliation.

CHAPTER TWO: FINDING AND GETTING THE JOB

There are a number of agencies whose purpose is to help people find jobs, and there are a number of laws intended to insure that the job-seeker is treated fairly. Sometimes the laws are effective and sometimes they are not. Sometimes the agencies can help, and sometimes, for a variety of reasons, they can't.

At the very minimum, you are supposed to be judged as a job applicant based upon your own qualifications for the specific job, and how those qualifications compare with those of the other applicants. Such job qualifications include matters such as your education, training, work experience, prior job record, ability to perform, and similar job-related standards.

You are **not** supposed to be turned away because of your sex, age, religion, creed, race, color, national origin, marital status, physical or mental handicaps—and in some cases, your political views—or any combination of the above, **unless** those things truly mean you cannot perform the work. In other words, the law allows certain narrow exceptions to the general rule that matters such as sex, race, age, and the like are not to be used as a standard for whether or not a person is qualified for a job. Whether or not one of these exceptions applies to a particular job depends upon the type of job and which of the many laws applies to the job.

A. Employment Services and Agencies

1. **The Montana Job Service.** The Montana Job Service is part of the Employment Security Division, Montana Department of Labor and Industry. There are local Job Service offices in a number of Montana cities and towns. See Appendix A at the back of this booklet for the location of the Job Service office nearest to you.

The Job Service is a joint federal-state agency, and its main purpose is to help unemployed persons find jobs. There is no charge for its services. The Job Service provides free job counseling, testing, and placement services. The local offices maintain a listing of available jobs in your community and throughout the state.

In addition, the Job Service helps persons in certain federal and state job training programs to find appropriate jobs. For example, the Job Service tries to place persons enrolled in the WIN Program (Work Incentive Program for persons receiving assistance from Aid to Families with Dependent Children or other federally funded assistance programs), the various CETA programs (programs under the Comprehensive Employment and Training Act, which offer on-the-job training, education, and other services), and programs to help the handicapped.

There are also special programs to assist veterans to find employment, such as the Veterans' Employment Service, 600 N. Cooke, Helena, Montana 59601 (406) 449-2062.

2. **Private Employment Agencies.** A private employment agency is a private business. It is not a government agency. Because it is a business, it must charge for the services it performs. If you use such an agency, you will be required to pay a fee.

You have certain specific rights and protections if you use a private agency. Such agencies must be licensed under the laws of Montana. That law provides:

(1) The agency cannot charge you any fee unless you sign a contract with the agency. [§ 39-5-308, MCA 1978.]

(2) The contract must contain: The name, address, and telephone number of the agency; the date your contract was made; your name; the amount of the fee you are to pay; and the following notice:

NOTICE TO APPLICANT - READ BEFORE SIGNING

This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it.

[§ 39-5-302, MCA 1978.]

This notice tells you that once you sign the contract you are legally bound by it. If you take a job the agency sends you to, the law requires you to pay the agency's fee. Be sure to get your own copy of the contract, with all signatures and all blanks filled in. **Do not** sign a contract that has blank spaces "to be filled in later."

Some other points in the same law are:

(1) The agency cannot send you to an employer where it knows a strike or lockout is going on. [§ 39-5-306, MCA 1978.]

(2) Before sending you out to apply for a particular job, the agency must reconfirm that the job is still available. [§ 39-5-307, MCA 1978.]

(3) The agency cannot charge you a fee just for letting you register, or for referring you to a state employment office or a union hall. [§ 39-5-308, MCA 1978.]

(4) Generally, the agency's fee is based upon a percentage of your gross income from the job during your first full month on the job. [§ 39-5-309, MCA 1978.]

<u>If your first full month's gross is:</u>	<u>You will pay this percent of the gross:</u>
Less than \$200	30%
\$200 to \$224	35%
\$225 to \$299	40%
\$300 to \$349	50%
\$350 to \$499	60%
\$500 to \$649	65%

\$650 to \$799

70%

\$800 and up

75%

Thus, if you gross \$679 during your first full month on the job, the maximum fee you should have to pay will be \$475.30.

If your new employer terminates you for no fault of your own within 90 days of starting the job, the maximum you can be charged by the agency is 10% of your first month's gross, which under the example above would be \$67.90.

If you quit or are fired **within 30 days** of beginning the job, you do not have to pay the agency more than 10% of the **gross amount you actually received** from that employer.

If you quit or are fired **after 30 days**, you will have to pay the full amount required by your contract, unless within 15 days of the last day you work you can convince the employment agency to let you pay less. In other words, using the example above, if you work 18 days and then quit because you don't like the job, you will have to pay the full \$475.30, unless you can get the employment agency to agree to accept less. If you do make such an agreement, be sure to get it in writing.

(5) If you pay in advance and do not get one of the jobs the agency sends you to, or if the maximum fee turns out to be less than the amount you paid, you are entitled to a refund. [§ 39-5-311, MCA 1978.]

(a) **For Refund:** First, contact the employment agency. If the agency refuses to make a refund that you believe is lawfully yours, then contact the Labor Standards Division, Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601 [(406) 449-5600].

(b) **Other Complaints about Private Employment Agencies:** You may also file other types of complaints about a private employment agency with the Administrator of the Labor Standards Division.

(c) **Who Pays the Fee:** Check with your employer to see whether or not the employer will reimburse you for all or part of your fee. Also, in some instances the employer will directly pay the employment agency, and you should check with your employer to be sure the fee is not being paid twice.

3. Job Ads and Applications. Employment agencies and employers cannot lawfully use any job ads, application forms, or similar materials which directly or indirectly indicate that any job is not available to persons of a particular sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin. Generally, the only exception to this is when the limitation is based on a bona fide occupational qualification (BFOQ). [§ 49-2-303, MCA 1978.]

Thus, the law requires that job ads and applications be presented in an unbiased way that does not discourage women, minorities, and others from applying. For example, ads for jobs cannot state that men or women are preferred for particular jobs. Nor can they suggest or imply that such preferences exist.

4. Job Referrals. The Montana Human Rights Act specifically

prohibits an employment agency from failing or refusing to refer persons for jobs, or from classifying them or in any other way discriminating against them, on the same basis set out above. [§ 49-2-303, MCA 1978.] For example, an employer cannot call an agency and say: “We need a pretty girl, not over 25, white, single....” Nor can an agency call an employer and say: “We have an applicant here who looks pretty good for your job. Will you talk to a (woman)?...(black)?...(single person)?...(forty-five year old)?...”

Many employment agencies, both public and private, have in the past sorted and routed applicants based on just these types of criteria. Women to the clerical jobs; men to the sales, managerial, executive jobs. This sorting and routing is unlawful but sometimes still happens. If you are consistently sent to jobs which require lower qualifications than you have, you should be alert to whether or not the agency is practicing this sorting and routing. If the agency is public, you have a right to look at all the notices for job openings.

5. Discrimination Complaints. The Montana Human Rights Act specifically applies to public and private employment agencies and to employers seeking new employees, as do certain other state and federal laws. See § 49-2-303, MCA 1978. Complaints about discriminatory practices should be filed with the Montana Human Rights Commission (see page 13 of this booklet for further information.)

B. Apprenticeships

Apprenticeship is a form of combined training and work, which is provided both on-the-job and in the classroom. It is intended to teach the skilled trades and crafts to interested applicants. There are hundreds of skilled trades and crafts which use an apprenticeship system. During the apprenticeship period, the apprentice is paid a salary which will usually increase during the apprenticeship period, and the length of the apprenticeship varies from trade to trade. An apprenticeship may be of interest to you if you would like to work in any of the skilled trades or crafts, such as carpentry, masonry, printing, plumbing, or one of the many others.

In Montana, most apprenticeship programs are registered with the Apprenticeship Bureau, Labor Standards Division, Montana Department of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601 [(406) 449-5600]. Standards for such programs in each trade or craft are established by joint apprenticeship and training committees, which consist of an equal number of employer and employee representatives from that trade or craft.

The Apprenticeship Bureau participates in and supervises most apprenticeship programs in Montana, although there are a few apprenticeship programs with which the Bureau is not involved. Apprenticeship programs funded by federal contracts, or state funds, and apprenticeship programs in plumbing, must be registered with the Bureau. Registered programs must comply with the Bureau's standards.

Generally, these standards are to the apprentice's advantage. Each apprentice must have a written apprenticeship agreement with her employer which sets out the specific terms and conditions of the apprenticeship. It specifically must include what skills and processes the apprentice is to be taught and approximately how much time she will spend at each. It must also include the number of hours to be spent in "related and supplemental instruction" (the theoretical, "classroom" aspect of the trade or craft), as well as the total required hours for completion of the apprenticeship.

In general, the minimum number of hours required for completion of an apprenticeship is "not less than 2,000 hours of reasonably continuous employment" [§ 39-6-106, MCA 1978], although some of the trades with established apprenticeship programs require up to 8,000 hours or 4 years. The law recommends that at least 144 hours of "classroom"-type instruction per year be given as part of the program.

When an apprentice completes a Bureau-approved apprenticeship, she receives a certificate of completion, which is recognized throughout the United States, and which will give her journeyworker status and entitle her to journeyworker pay.

Many apprenticeship programs are sponsored by employers and some are sponsored by labor-employer organizations. Admission may require passing both practical and theoretical examinations, prior experience, and/or character or other references. Some trades and crafts are relatively easy to enter and others are extremely difficult.

1. Inquiries. To find out about apprenticeship opportunities, contact your local Job Service Office, or write to the Montana Apprenticeship Bureau, at the address above. You might also contact your nearest vocational technical center, since those centers offer certain types of apprenticeship courses, usually in conjunction with an apprenticeship program, or a representative of a labor organization in the craft or trade which interests you.

2. Discrimination in Apprenticeship Programs. The Montana Human Rights Act does not permit sex discrimination or discrimination on the other prohibited bases in apprenticeship or other training programs. This rule applies to admissions and to how a person is treated while in the program. [§ 49-2-303, MCA 1979.]

In addition, the Montana Governmental Code of Fair Practices requires that any such programs which are conducted by or participated in by governmental agencies must be open to all persons based upon their qualifications and merit, without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Further, special attention in such programs must be paid to the problems of persons who are culturally deprived, educationally handicapped, or economically disadvantaged. Training opportunities are supposed to be extended to "involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest." [§ 49-3-203, MCA 1978.]

3. Affirmative Action. Federal apprenticeship regulations

published in May, 1978, require sponsors of programs covered by the regulations which have more than five apprentices to take affirmative action to recruit women and minority persons, when those groups do not have a reasonable share of the training opportunities. Montana law also seems to require some affirmative action [§ 49-3-201 (2), MCA 1978], and Montana has adopted certain federal standards for affirmative action which require affirmative action for women in apprenticeship programs, including the use of goals and timetables for reaching those goals.

C. Protection from Sex Discrimination

If you believe you have been denied admission to an apprenticeship program, been routed only to low-level jobs by an employment agency, been refused a job by a prospective employer, or been subjected to any similar job-related type of treatment **because you are a woman, or for any other of the forbidden bases of discrimination**, you may have been the victim of unlawful discrimination.

1. Types of Law. A number of laws, both state and federal, prohibit these practices. If the offender is an agency of the state or local government, then both the Montana Human Rights Act, and the Governmental Code of Fair Practices may apply. If the offender is a private person or organization, then the Montana Human Rights Act and/or Title VII of the federal Civil Rights Act of 1964 may apply.

2. Groups Protected. Title VII of the 1964 Civil Rights Act prohibits discrimination in employment based on sex, race, color, religion, or national origin. The Montana Human Rights Act also prohibits employment discrimination based upon age, creed, marital status, or physical or mental handicap, but Title VII does not. Other federal laws cover certain of those matters. (See sections elsewhere in this handbook on matters such as age and handicap discrimination.)

3. Prohibited Acts. Under Title VII, a "covered employer" cannot discriminate on the prohibited grounds in: hiring or firing; wages, fringe benefits; classifying, referring, assigning, or promoting employees; extending or assigning facilities; training, retraining, or apprenticeships; or any other terms, conditions or privileges of employment. Thus, the types of discriminatory acts covered by Title VII are very like those covered by the Montana Human Rights Act.

4. Covered Employers. One of the key differences between Title VII and the Montana Human Rights Act is the types of employers covered by each. Title VII generally covers: most employers with 15 or more employees; public and private employment agencies; labor unions with 15 or more members; and joint labor-management committees for apprenticeship and training. Indian tribes are not covered as "employers," however, and religious institutions may require that employees belong to certain religious faiths, but are fully covered on the other prohibited bases.

The Montana Human Rights Act is not limited by how many employees an employer has. The act applies even if the employer has

only one employee. However, the Montana act fully exempts as “employers” all fraternal, charitable, or religious associations or corporations which are not for profit or which provide services only on a membership basis [§ 49-2-101, MCA 1978]. Further, the Montana act does not apply to agencies of the federal government.

5. Federal and State Contractors. Executive Order 11246, as amended, prohibits federal contractors, subcontractors, and contractors working on projects funded in whole or part with federal funds, from engaging in discrimination on the basis of sex, race, color, religion, or national origin. All facilities of the contractor are covered by this order, even those not directly being used for the federal contract. However, if the contractor is an agency of the state or local government, then only the agency which is actually the contractor, and not the entire state or local government is covered.

Federal contractors are reviewed for compliance with Executive Order 11246 by the Office of Federal Contract Compliance Programs (OFCCP) of the United States Department of Labor. This office has required certain contractors to implement affirmative action programs to recruit, hire, and train women and minority group men for certain jobs which have not been open to those groups in the past.

OFCCP guidelines provide, among other things, that federal contractors may not advertise for employees under “male” and “female” classifications, base seniority lists on sex, deny a person a job because of states’ protective labor laws, or distinguish between married and unmarried persons of one sex only.

Montana’s Governmental Code of Fair Practices also contains a prohibition against such discrimination in state and local government contracts. [§ 49-3-207, MCA 1978.]

6. Other Federal Laws Prohibiting Sex Discrimination in Employment. A number of other federal statutes prohibit sex discrimination in programs which use federal funds. These include:

(a) Title IX of the 1972 Education Amendments, administered mainly by the Office for Civil Rights of the U.S. Department of Health, Education and Welfare (generally protects only students);

(b) State and Local Fiscal Assistance Act (Revenue Sharing), administered by the Office of Revenue Sharing, U.S. Treasury Department;

(c) Comprehensive Employment and Training Act, administered by the U.S. Department of Labor.

D. Sexual Harassment

An unpleasant but unfortunately pervasive problem which many women encounter both in seeking work and while on the job is sexual harassment. Sexual harassment has been defined as:

...unsolicited nonreciprocal male behavior that asserts a woman’s sex role over her function as worker. It can be any or

all of the following: staring at, commenting upon, or touching a woman's body; requests for acquiescence in sexual behavior; repeated nonreciprocated propositions for dates; demands for sexual intercourse; and rape.¹

Other authors add that the real key to the seriousness of sexual harassment on the job is that it combines the sexual advances with direct or indirect threats that non-cooperation may affect the person's employment.²

The evidence indicates that sexual harassment is all too common, and that most women ultimately respond to it by leaving their jobs, either because they are fired or decide to quit.

The woman being subjected to sexual harassment is almost always in a no-win situation. If she does not comply, she may be fired or the harassment will escalate until she leaves voluntarily. If she does comply, sooner or later that too almost always catches up.

The authors of a worksheet on sexual harassment offer the following informal remedies:³

(1) **Be Professional and Business-Like:** Be certain there is a business reason for unscheduled meetings. Avoid doing personal favors. Avoid sharing personal confidences and problems. Don't ask for special treatment.

(2) **Recognize That You Are Being Harassed:** Learn to read the signals. Don't feel guilty. Don't ignore it.

(3) **Seek Outside Support:** Discuss the problem with female coworkers. Contact women's groups or local rape crisis lines for support.

(4) **Talk With The Offender or Your Immediate Supervisor:** Express your feelings. Be assertive. Try humor if appropriate.

(5) **Keep A Written Record Including:** Detailed account of incidents. Actions taken to remedy the situation. Results of your actions.

1. Remedies. Sexual harassment by or with the knowledge of a job supervisor or other person in a position to affect a woman's employment is a violation of the Montana Human Rights Act and Title VII.

Complaints can be filed with the Human Rights Commission and EEOC, as explained elsewhere in this booklet.

A union member may file a grievance with the union using standard grievance procedures.

If the sexual harassment amounted to actual assault or rape, you may file a criminal complaint with the county attorney. However, unless there is substantial proof of what happened, the county attorney may be unwilling or unable to pursue the matter.

You might also pursue certain legal remedies through a private attorney.

If you quit your job or are fired, seek unemployment compensation.

¹Lin Farley, *Sexual Shakedown*, McGraw-Hill Book Co., 1978, p. 15.

²Claudia Kuric and Lois Menzies, "Sexual Harassment," Workshop handout, Montana Women's Bureau, 1979.

³Id.

Also, if the harassment causes serious emotional problems for you, or emotional problems with physical symptoms, seek worker's compensation benefits. Again, proof may be difficult, but you may get these benefits if your proof is adequate. See Section H of Chapter Three for a description of these benefits, what agency to contact and how to file a claim.

E. When You Have a Right to Complain

1. An employer refuses to let you file an application but accepts other applications;
2. a union or an employment agency refuses to refer you to job openings or refers you only to openings which are far beneath your qualifications;
3. a union refuses to let you join;
4. you are passed over for a promotion for which you are qualified;
5. you are paid less than others for comparable work;
6. you are placed in a segregated seniority line;
7. you are left out of training or apprenticeship programs;
8. you are fired or laid off;

AND

...the reason for any of these acts is your sex, race, color, religion, national origin, physical or mental handicap, marital status, age or creed.

F. Where, When, and How to File a Complaint

1. **Where.** File a complaint with the Montana Human Rights Commission, Suite 300, Steamboat Block, 616 Helena Avenue, Helena, Montana 59601 [(406) 449-2884]. If the acts or practices you are complaining of appear to violate Title VII of the 1964 Civil Rights Act, as well as the Montana Human Rights Act, the Commission staff will help you fill out both a Montana complaint and an EEOC complaint, and will forward the EEOC complaint to the federal office.

2. **When.** The complaint must be filed within 180 days after the occurrence of the unlawful act or after your discovery of it. The 180 day limitation is absolute, and complaints about events occurring earlier than 180 days cannot be considered by the Montana Human Rights Commission [§ 49-2-501, MCA 1978].

Some violations are considered "continuing violations" and therefore are not subject to the 180 day filing limitation until the day violation finally stops.

3. **Human Rights Division Assistance.** The Montana Human Rights Division is the staff of the Human Rights Commission. The Division staff will assist you in preparing your complaint. You may write or call the Division Office in Helena at the address or telephone number given above for the Commission. (See sample complaint forms in Appendix E and F.) In the initial stages your complaint is confidential.

4. **After Your Complaint is Filed.** The Division staff will investigate your complaint. If there is substantial evidence to support

your complaint, the staff will try to get the employer to eliminate the discriminatory practice by using informal methods such as persuasion, conferences, and conciliation.

If informal settlement efforts do not work, then your complaint may go to administrative hearing before the Commission. That hearing must be held in the county where the alleged unlawful act happened [§ 49-2-505, MCA 1978].

5. EEOC Complaints. As noted above, if your complaint under the Montana Human Rights Act also appears to show a violation of Title VII, or if it shows only a Title VII violation, you may file a complaint with the Equal Employment Opportunity Commission (EEOC). Such complaints should be filed through the Montana Human Rights Commission, which will forward the complaint to the correct office.

If your complaint alleges a violation of both the Montana act and Title VII, you should file with the Montana Human Rights Commission rather than only with EEOC. EEOC has no power to act on the Montana part of the complaint. Also, EEOC may decide to act directly on such a complaint, but usually will “defer” to the Montana Human Rights Commission, to give the Commission the opportunity to act. Therefore, you may save time and effort by filing both complaints with the Montana Commission.

Also, though both EEOC and the Montana Commission have case backlogs, your case may be processed more quickly by the Montana Commission than by EEOC.

If you file first with the state, you have 300 days from the date of the violation or from your discovery of the violation, to file with EEOC.

6. Individual Court Enforcement. It is possible to enforce your rights under the Montana Human Rights Act and Title VII in court. However, these laws do not allow you to go immediately into court. For Title VII complaints, you must have a “right to sue” letter from EEOC, and under the state act you generally must go through all the procedures of the Montana Human Rights Commission. An effort is being made to simplify some of these procedures for persons who wish to bring their own lawsuits, and there are some exceptions to the rules above.

The Montana Human Rights Division or your own attorney can advise you.

G. Federal and State Age Discrimination Law

The federal Age Discrimination in Employment Act prohibits discrimination against persons aged 40 to 70, in hiring, firing, compensation, and other conditions of employment. This act applies to all public employers, private employers which have 20 or more employees, employment agencies which serve covered employers, and labor unions which have more than 25 members.

It does **not** cover jobs for which age is a bona fide occupational qualification, and it prohibits an employer from using employee benefit plans as an excuse to refuse to hire older applicants, or to retire older workers.

In general, it prohibits, an employer from forcing a worker to retire until the worker is age 70, with only a few very narrow exceptions.

Since July 1, 1979, this law is enforced by the Equal Employment Opportunities Commission (EEOC) and complaints should be filed with EEOC. It can also be enforced by an individual, through the courts.

To make an EEOC complaint, contact the Montana Human Rights Commission, Suite 300, Steamboat Block, 616 Helena Avenue, Helena, Montana 59601 [(406) 449-2884]. The Commission will forward the complaint to EEOC.

This complaint must be filed **within 180** days of the acts you are complaining about. It must contain the name of the employer who committed the acts, and must give a general description of the acts.

The Montana Human Rights Act also prohibits discrimination based upon age. The primary difference between the federal and state age discrimination law is that the state law **does not** contain any upper or lower age limitations on coverage. Thus, under Montana law, a worker is covered at any age from age-based discrimination. Complaints should be filed with the Montana Human Rights Commission.

It should be noted, however, that employers may use “maturity” or related criteria in hiring or other employment matters, so long as this is a real job requirement and not merely a disguise for age discrimination.

H. Federal Handicap Discrimination Law

Section 503 of the Rehabilitation Act of 1973, as amended, covers employers who are federal contractors or subcontractors and who have contracts for amounts over \$2,500.00. Under this Act, covered employers must take affirmative action to employ and to advance in employment qualified handicapped workers, without discrimination based upon their physical or mental handicaps.

Federal regulations under this act require these employers to make efforts to recruit such workers, and, in some cases, to provide individualized accommodation for their physical or mental limitations.

In general, this Act prohibits the same types of acts and practices prohibited by the Montana Human Rights Act or Title VII (see p. 16 of this booklet), if those things are done because of your handicap, the history of your handicap, or because you are regarded as handicapped. You also have a right to complain if the covered employer fails to provide reasonable accommodation for your handicap.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits handicap discrimination in employment by recipients of federal funds.

To file a complaint under Section 503, or for further information, contact the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

In Montana, the Human Rights Commission has been designated as the investigating authority for complaints under Section 504. The Commission may be contacted for assistance with such complaints.

I. Lie Detector Tests and Medical Examinations

(a) It is unlawful under Montana law for an employer to require an applicant or an employee to take a polygraph test or any form of a mechanical lie detector test as a condition of initial or continued employment. [§ 39-2-304, MCA 1978.]

The only exception to this is if the employer is a public law enforcement agency.

(b) It is also unlawful for an employer to require an employee or applicant to pay the cost of a medical examination or of furnishing records of a medical examination as a condition for initial or continued employment. [§ 39-2-301, MCA 1978.]

(c) An employer's violation of either of these sections is a misdemeanor. Such complaints must be made to your local county attorney.

CHAPTER THREE: JOB RIGHTS ON THE JOB

While you are on the job, you are protected from certain practices and given certain affirmative rights by many of the laws already mentioned. There are many others which are discussed briefly below.

A. State and Federal Minimum Wage and Overtime Pay

In general, under both the Montana Minimum Wage and Hours Act [§ 39-3-401, *et seq.*, MCA 1978], and the federal Fair Labor Standards Act (FLSA), the standard work week for employees is 40 hours. Any covered employee who works more than 40 hours in any one work week is entitled to “time-and-a-half” for the hours worked in excess of 40, unless the employee is specifically exempted by the law.

The current Montana minimum wage is \$2.00 per hour. The Federal minimum wage is \$3.10. It will rise to \$3.35 on January 1, 1981.

There are a number of tests in different occupations to determine whether or not your job is covered by the federal FLSA or by the Montana Minimum Wage and Hours Act. Most employees now are covered by the FLSA, depending upon an employer’s number of employees, volume of business, and other tests. State government and local governments such as county and municipal governments, are **not** covered by the FLSA, but **are** covered by the Montana act.

In general, the following jobs are not covered by either the federal or state minimum wage or overtime provisions: casual babysitters; executive, administrative, and professional employees; and some agricultural workers.

Employers cannot decide for themselves whether to be covered by the state or federal law. If both apply, or if the FLSA applies but the Montana act does not, then the employer is obliged to follow the provisions of the FLSA. If the FLSA does not apply but the Montana act does, then the employer is bound to obey the Montana act.

In general, learners, apprentices, handicapped workers whose work is part of or incidental to training programs, and certain students, may be paid at a lesser rate than the minimum wage.

Certain workers may be covered by the minimum wage but not by the overtime provisions. Under both the FLSA and the Montana act, these workers generally include certain covered agricultural workers and some household workers. Under the FLSA only, they include taxicab drivers, and employees of motor carriers, railroads, and airlines.

Under federal law, overtime pay for certain types of jobs can be computed other than on a 40-hour week. For example, under the FLSA, overtime for employees of private hospitals, nursing homes and rest homes, can be computed on a daily basis (overtime for more than 8 hours per day) or on a biweekly basis (overtime for more than 80 hours in a 14 day period). Union contracts may also contain such provisions.

1. Non-salary Compensation. Lodging, board, and other facilities provided by an employer can be counted as part of an

employee's wages. Also, under the FLSA, tips can be counted as part of the minimum wage, but only for workers in an occupation in which they customarily and regularly receive tips of more than \$30 per month.

2. Complaints and Further Information. To make a complaint about a matter relating to the minimum wage or to overtime compensation, contact the Montana Labor Standards Division, 35 South Last Chance Gulch, Helena, Montana 59601 [(406) 449-5600], if you believe you are covered by the Montana Minimum Wage and Hours Act, or the federal Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room 4311, 125 S. State Street, Salt Lake City, Utah 84138, if you believe you are covered by the Fair Labor Standards Act. These offices can also provide additional information.

B. The Federal Equal Pay Act

In 1963, Congress amended the Fair Labor Standards Act to require equal pay for men and women workers who work in the same establishment and whose jobs require equal skill, effort, and responsibility.

The Equal Pay Act does not permit an employer to lower the wages of an employee in order to make the pay equal; rather the employer must raise the wages of the lower paid worker.

This act allows differences in pay based upon a seniority or merit system, however, or differences where pay is based upon quality or quantity of production.

The Equal Pay Act covers all employees covered by the Fair Labor Standards Act, and in addition covers employees of state and local government, executive, administrative, and professional employees, and outside salespeople.

Under this act, "wages" includes all job-related benefits and payments, including overtime, uniforms, travel, health insurance, and the like.

Jobs need not be identical to require equal pay. They need only be "substantially equal."

Complaints should be filed with the Equal Employment Opportunity Commission (EEOC), either directly or by contacting the Montana Human Rights Commission, which will forward the complaint to the appropriate EEOC office.

C. Discrimination in Promotion

The Montana Human Rights Act, Title VII, and Executive Order 11246 each require that promotions be given without regard to the prohibited bases of discrimination. In general, these acts require that promotion decisions be made on valid promotion standards. Executive Order 11246 also requires that federal contractors set goals and timetables to promote women and minorities.

The Age Discrimination in Employment Act and Section 503 of the

Rehabilitation Act of 1973 also protect the promotion rights of older workers, and physically or mentally handicapped workers.

Complaints relating to promotions should be filed with the Montana Human Rights Commission, Suite 300, Steamboat Block, 616 Helena Avenue, Helena, Montana 59601 [(406) 449-2884].

D. Attachment of Wages - Garnishment

Attachment or garnishment is a procedure provided by law which allows a creditor (someone to whom money is owing), to take part of the debtor's salary or wages to pay off the debt.

1. Montana Law. In Montana, salary or wages can be attached only if the creditor goes to court and gets a judgment against the debtor for the amount of money owed. Then, if the debtor does not pay, the creditor can have the county sheriff attach a part of the debtor's salary or wages on each of the debtor's paydays, until the debt is fully paid. Generally, this is done as follows: the sheriff notifies the employer of the attachment and the employer must then forward the debtor's pay to the sheriff. The sheriff deducts the portion to be paid to the creditor and pays the rest to the debtor.

Montana law will exempt earnings of a judgment debtor for her personal services rendered at any time within 45 days preceding the attachment, if she supports her family in whole or part by her labor, and if those earnings can be shown to be necessary for her family's support. However, if the debt was incurred by any member of the family for "gasoline and for the common necessities of life," then half of the debtor's earnings can be attached and applied to the debt. [§ 25-13-614, MCA 1978].

In this section, "family member" generally means a member of the immediate family who resides with the debtor. See § 70-32-102, MCA 1978.

2. Federal Law. Under the federal wage garnishment law, "earnings" include any compensation for personal services, such as wages, salary, commissions, bonuses, pensions, and retirement pay. "Disposable earnings" are the amount of earnings which remain after the required withholding taxes are deducted.

Federal law uses a formula to determine the maximum part of total disposable earnings which may be garnished in any pay period. That maximum is the lesser of: (a) 25% of the disposable earnings for that period or (b) the full amount by which disposable earnings for each work week exceeds 30 times the basic federal minimum hourly wage prescribed by the federal Fair Labor Standards Act. In 1980, with the federal minimum wage at \$3.10, any amount in excess of \$93.00 per week could be subject to garnishment.)

3. Which Law Applies. If state law protects a larger part of a person's earnings than federal law does, state law controls. Thus, if your entire salary for the 45 days preceeding attachment was essential for you and your family's needs, **and** if the debt in question was not incurred for "gasoline or the common necessities of life," your entire salary could be

protected by following the exemption procedures provided by Montana law. (You will probably need a lawyer for this, and, if your earnings are very low, you might contact your nearest Montana Legal Services Office.)

However, if you do not meet the Montana requirements to exempt all of your personal earnings, then the federal law will usually apply, and will allow your creditor to take the maximum portion permitted under the federal act.

4. Special Situations. If your personal earnings are being garnished or attached under a bankruptcy court order, or because you owe money on federal taxes, the law discussed above will not protect your earnings.

However, there are limits on the amount that may be attached from the wages of someone who is behind on payments for child support and alimony. This amount depends upon the amount of a debtor's disposable earnings, whether the debtor is supporting a spouse or dependent child other than the person that the debt is for, and how much time has passed since the support payments were due.

5. Protection from Discharge. Montana law provides that no employer may discharge or lay off an employee because the employee's wages have been attached or garnished, regardless of how many times this happens [§ 39-2-302, MCA 1978].

The federal wage garnishment law gives the same type of protection, but only for "one indebtedness." "One indebtedness" means a single debt, regardless of how many attempts are made to collect the single debt. "One indebtedness" also includes where several creditors combine their claims, or where several debts have been combined in one court action.

For tax liens, several levies to collect one tax delinquency are treated as "one indebtedness." However, each court order for arrears in child support or alimony is considered a separate indebtedness.

Thus, although under federal law you cannot be fired for the first garnishment, you can be fired for the second or subsequent garnishments. However, Montana law supercedes federal law in this instance and so in Montana the debtor is protected regardless of how many garnishments or attachments occur.

E. Maternity Leave

1. Montana Law. Montana maternity leave law makes it unlawful for an employer to fire a woman because she is pregnant, or to refuse to give her a reasonable maternity leave. Also, if the woman is disabled as a result of pregnancy, the employer may not deny her any compensation she has earned because of accumulated disability or leave benefits under the employer's employee benefit plans. Nor may the employer retaliate against the woman for filing a complaint, or require that she take an unreasonably long mandatory maternity leave [§ 39-7-203, MCA 1978].

Further, when the employee lets the employer know that she is ready to return to work, she must be reinstated either to the same job or an

equivalent job, and she must receive equivalent pay, accumulated seniority, retirement, fringe benefits, and any other service credits. The only exception to this rule is where her employer is private, and the employer's circumstances have changed so much that it is impossible or unreasonable to so reinstate her [§ 39-7-204, MCA 1978].

2. Complaints Under Montana Law. Complaints should be filed with the Commissioner of Labor and Industry, 35 South Last Chance Gulch, Helena, Montana 59601. In addition, this law may also be enforced privately, in state district court.

3. Federal Law. In October 1978, Title VII of the 1964 Civil Rights Act was amended to prohibit discrimination based on pregnancy. Title VII requires that women affected by pregnancy, childbirth, or related medical conditions, are to be treated just like other ill or disabled workers for all employment-related purposes, including receipt of benefits under employee benefit programs.

Title VII does not require employers to start special programs for pregnant workers or to give them special treatment. But it does prohibit discriminating against them because of their pregnancies or related medical conditions.

Title VII does not require an employer's health insurance program to pay for routine abortions. However, if the woman's life would be endangered, or where the woman suffered medical complications, coverage may be required. Employers can, of course, voluntarily provide routine abortion coverage.

An employer cannot fire or refuse to hire a woman solely because she has had an abortion.

Complaints under Title VII should be filed with the Montana Human Rights Commission, as set out on page 13 of this booklet.

F. Tax Credit for Child Care and Household Help

1. Federal Law. The United States Internal Revenue Code now permits a tax **credit** on your federal income taxes of up to 20% of your actual expenses for care of dependents, if those expenses were incurred to allow you to hold a job.

(a) **Maximum Credits:** A tax credit is an amount subtracted directly from the amount of tax you would otherwise owe, after you have figured your base tax bill. If you have one qualifying dependent, your maximum "creditable amount" is \$2,000. 20% of \$2,000 is \$400, and thus, if your "creditable" expenses were \$2,000 or more, you receive a direct credit of \$400. If you have two or more qualifying dependents, the maximum creditable amount is \$4,000, with a maximum credit of \$800. Thus, if you have three qualifying dependents and spend a creditable amount of \$3,700, your direct credit would be \$740.

(b) **Where Care Must be Provided:** For all dependents over age 14, the expenses must be for services in your home. However, for dependents 14 and under, the credit applies to care both in your home and elsewhere.

(c) Who May Use the Credit: All eligible taxpayers may make use of this tax credit regardless of the family's gross income, whether or not the taxpayers itemize deductions, and on which tax form they file their return. It is available to single working parents, to married couples if both spouses work full or part time or if one is disabled, and to fulltime students with working spouses.

A divorced or separated parent who has custody of a child aged 14 or younger for more than one half of the calendar year is eligible for the credit, even if the other spouse is entitled to claim the personal exemption for the child. Thus, if you are divorced and have custody of two children aged eight and ten from May through December, you may qualify for the tax credit. A deserted spouse may also claim the credit if the deserting spouse is absent for the last six months of the taxable year (from at least July 1 through December 31).

(d) Filing Joint Return: If you are married, you must file a joint return in order to claim the credit.

(e) Limit to Earned Income: The tax credit applies only to **earned** income. Thus, if you have income from property you own or the sale of such property, you cannot use this credit to reduce your taxes on that income.

The earned income limitation applies both to married and unmarried taxpayers.

(f) Figuring Credit for Married Persons: For married persons, the amount of qualified child care and household help expenses (the "creditable" expenses upon which the 20% credit is figured) cannot be any greater than the actual amount earned by the spouse with the lower earned income.

(g) Payments to Relatives: Until recently, child care payments to relatives, including those living in the taxpayer's household, could qualify for the credit if: (1) the relative was not the taxpayer's dependent; and (2) the relative's wages were subject to social security taxes.

For taxable years beginning after December 31, 1978, the credit is available for wages paid to certain close relatives without the requirement that these wages be subject to social security taxes. This applies, for example, to payments to grandparents, brother or sister, uncle or aunt, niece or nephew, so long as the relative is not a dependent of the taxpayer.

(h) Payments to the Taxpayer's Minor Child: No credit is allowable for payments made to the taxpayer's minor child (a child under the age of 19).

(i) Annual Computation: The credit is computed on an annual basis. Thus, the entire credit is available for taxpayers who have the required number of dependents at any time during the taxable year. However, as explained in subsection (c) above, a different rule applies to deserted spouses, requiring that the deserting spouse be absent for the last six months of the taxable year.

2. Montana Law. Under § 15-30-121, MCA 1978, child and

dependent care expenses are allowed as **deductions**, unlike the new federal law which makes them a tax credit.

The difference between a tax credit and a tax deduction is that a deduction is subtracted from gross income to arrive at an individual's adjusted gross income, the amount upon which the tax is figured. Thus, it reduces the amount of income upon which taxes are based. A tax credit, on the other hand, is subtracted directly from the amount of taxes owing, once the amount of taxes has been computed upon the adjusted gross income.

(a) **Relationship of Federal and Montana Law:** Montana law requires that the deduction for child and dependent care must be determined under the provisions of Section 214 of the federal Internal Revenue Code of 1954 that were in effect for the taxable year which began on January 1, 1974. Federal law has changed quite a bit since 1974, and therefore, federal and Montana law differ quite a bit in this area.

(b) **Monthly Basis for Deductions:** Unlike federal law, the state deduction is figured on a monthly basis, and the deduction may be up to \$400 per month.

(c) **Dependents Covered:** The deduction applies for a dependent of the taxpayer who is under 15 years of age, or for the taxpayer's spouse or dependent who is physically or mentally incapable of caring for himself or herself.

(d) **Places and Amounts:** Like federal law, expenses must be incurred for services in the taxpayer's household except for care of dependents 14 or under. For child care outside the home, the deduction may be up to \$200 per month for one child, \$300 for two, and \$400 for three or more. Any difference between the maximum allowable amount and the amount actually expended for child care may also be deducted if it is expended for other types of expenses in the house which are allowable under the same provision.

(e) **Itemization of Deductions:** The child care and household help deduction is treated as a personal expense and requires that the taxpayer itemize deductions.

(f) **Requirements for Married Couples:** For married couples, the deduction is allowed only if a joint return is filed and if both spouses are employed full time, or one is employed full time and the other is physically or mentally handicapped.

(g) **Payments to Relatives:** The 1979 Montana Legislature amended the provisions applying to child care payments to relatives, effective for tax years beginning after December 31, 1978. Prior law made payments for child care to family members, relatives, or any dependent living in the taxpayer's household ineligible. The 1979 amendments removed this restriction for all relatives who are not the taxpayer's dependents, and for children of the taxpayer, if such children are over 18.

(h) **Sliding Income Scale:** Montana law still provides a sliding income scale for the child care deduction. If the adjusted gross income of a married couple or single parent exceeds \$18,000, the deduction is reduced 50 cents for each dollar of additional income. Thus, when the adjusted

gross income is \$27,600, no child care expenses are allowable. [The absolute maximum deduction is \$4,800 (\$400 per month for each of 12 months); reducing the maximum deduction by 50 cents for each dollar earned above \$18,000 would make the deduction 0 at \$27,600.]

G. Occupational Safety and Health Protection

1. Federal Law. In general, many Montana workers, like those throughout the rest of the nation, are covered by the federal Occupational Safety and Health Act of 1970, which is administered by the Occupational Safety and Health Administration (OSHA). That act covers every employer in a business “affecting commerce,” except those where a specific type of workplace is covered under a special federal law. Examples of such specially covered occupations are mining, and those involving atomic power. In general, employees of the federal government are covered by a special executive order.

2. State Law. In Montana, most employees are covered by the Montana Safety Act [§50-71-101, *et seq.*, MCA 1978]. The Montana Safety Act program is administered by the Workers’ Compensation Division, Montana Department of Labor and Industry, 815 Front Street, Helena, Montana 59601. Under the Montana act, the Division has adopted many of the OSHA regulations. Thus, many health and safety provisions in Montana are identical or very similar to OSHA standards, because of state adoption of those standards.

In addition, Montana has the Occupational Health Act of Montana [§ 50-70-101 *et seq.*, MCA 1978], which covers emission standards, occupational diseases and other matters, and is administered by the Montana Department of Health and Environmental Sciences, Room 200, Cogswell Building, Helena, Montana 59601 [(406) 449-2544]. There are many other specific statutes in Montana to protect the health and safety of workers, such as those on mine safety (coal mines and non-coal mines, Title 50, chapters 72 and 73, MCA 1978) and others.

3. General Standards. The purpose of these occupational safety and health laws is to require safe and healthful working conditions, to the extent possible and reasonable.

Generally, each employer must provide a work place free from recognized hazards. Employers must also use occupational practices or methods necessary to protect their workers. Further, it is the responsibility of the employer to know the standards, to implement them, and to assure that employees both have and use any necessary personal protective equipment.

4. Employee Health and Safety Rights. In general, as an employee your health and safety rights include:

- (a) a safe and healthful workplace;
- (b) participation in an OSHA inspection of your workplace, by bringing to the attention of an OSHA inspector any condition you believe violates OSHA standards;
- (c) access to information about job-related accidents and injuries at your workplace;

(d) filing a workplace complaint with OSHA, or with the State Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601 [(406) 449-2047], or with your union or employee organization representative.

5. Complaints and Further Information. Other state and federal laws provide safety standards for specific occupations. If you are in some particularly hazardous occupation, there may be special laws applying to your situation. Often, these laws require that employers put up safety posters to tell you where to inquire for further information or assistance. If no such poster appears at your work place, the State Workers' Compensation Division may be able to give you information or assist you, or you may file your complaint with the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, Washington, D.C. 20210.

Both OSHA and the Workers' Compensation Division will withhold your name if you file a complaint and if you specifically request that your name not be made available. Further, the law prohibits your employer from discriminating against you because you have filed a complaint or have exercised any rights under this law. If you believe such action is being taken against you or has been taken against you, you should file a complaint within 30 days of the date of the discriminatory action.

H. Compensation for Job-Related Injuries

If you are injured on the job or contract an occupational disease, you may be entitled to receive Workers' Compensation. Generally, every "employer" in the state of Montana is covered by the Montana Workers' Compensation Act [§ 39-71-101 *et seq.*, MCA 1978].

In general, the Workers' Compensation Act in Montana covers "injuries" (including certain employment-related diseases), and death.

1. When to Report an Injury. Any job-related injury which does not result in death must be reported to the employer or the employer's insurer **within 60 days** after the occurrence of the accident alleged to have caused the injury. The only exception is for the injured workers who are mentally incompetent and without a guardian, or who are minors (under 18 years of age) and without a parent or guardian. For these groups the act's time limitations are suspended until a guardian is appointed or the minor reaches 18 years of age, whichever is earlier [§ 39-71-602, MCA 1978].

2. Notice of Injury. The required notice of injury must state the name and address of the injured person; the time and place where the injury occurred; the nature of the injury; and must contain the signature of the injured person or someone on her behalf.

If the employer or the employer's agent or superintendent actually knows of the injury, that knowledge is adequate notice [§ 39-71-603, MCA 1978]. However, the problem with relying on such actual notice is that if the employer later claims not to have known, you may not be able to prove that notice existed, unless you gave the notice in writing.

3. Requirements for Claims. The act provides that claims are forever barred unless presented in writing to the proper party (the employer, the insurer, or the Workers' Compensation Division, depending on the type of insurance the employer has) **within 12 months** from the date the injury occurred [§ 39-71-601, MCA 1978]. Claims must be presented either by the claimant herself or by someone legally authorized to act for her.

The only exception to the 12-month claims limitation is when the claimant can give a reasonable showing that she did not know about her disability, in which case the Division may waive the time limit for up to an additional 24 months.

4. Insurers. In Montana, employers may elect one of three insurance methods. They may self-insure, if they meet the law's requirements for fiscal responsibility; they may purchase insurance from an insurer approved by the Workers' Compensation Division; or they may insure through the State Workers' Compensation Division itself.

5. Claims. An employer must provide employees with information about how to file workers' compensation claims. For further information, contact the Workers' Compensation Division, Montana Department of Labor and Industry, 815 Front Street, Helena, Montana 59601 [(406) 449-2047].

I. Unemployment Insurance

Unemployment insurance is a weekly benefit paid for a set number of weeks to eligible workers for periods when they are unemployed through no fault of their own. Montana, like other states, has its own unemployment insurance program, and pays benefits out of a fund collected from a special tax on Montana employer payrolls. Federal law requires states' programs to meet at least certain minimum requirements. Also, the federal government provides benefits for civilians laid off from federal jobs and for persons discharged from the Armed Forces.

1. General Coverage Requirements. To qualify as an "insured worker," a person must have been paid wages for "insured work" during a "base period" in an amount that is at least one and one half times the amount she was paid in the highest paid calendar quarter during the base period.

A "calendar quarter" is a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, of any calendar year. For purposes of unemployment insurance, the "base period" is the first four of the five full calendar quarters which immediately precede the first day of the week that a person files for unemployment insurance.

That is, if a person was laid off on July 7, 1979, her "base period" would run from April 1, 1978, through June 30, 1979. Her "base period" would thus include the quarters from April 1 through June 30, 1978 (No. 1); from July 1 through September 30, 1978 (No. 2); from October 1 through December 31, 1978 (No. 3); from January 1 through March 31, 1979 (No. 4).

This employee would qualify for unemployment benefits if during that entire time, from April 1, 1978, through March 31, 1979, she earned at least one-and-a-half times as much as she earned in her highest paid quarter during that time.

For example, if this employee's highest paid quarter during her base period was from January 1, 1979, through March 31, 1979, and she earned \$2,100 from insured work during that quarter, she would be covered if, for the full four quarters of her base period, she earned a total of at least \$3,150 from "insured work."

New law. After July 1, 1980, a person, in order to qualify, must have had at least 20 weeks of work with an average earning of \$50 per week during the base period, and the total base period wages must be at least \$1,000.

2. Insured Work. Most jobs are covered by unemployment insurance law and are thus "insured work." There are some exceptions, however, including certain agricultural labor and domestic work; services by a parent or spouse or minor child of the employer; home deliveries by newspaper carriers; services by real estate, securities, and insurance sales people paid solely by commissions and without guarantee of minimum earnings; services to certain schools by regularly enrolled students; and similar types of services.

3. Eligibility for Benefits. To be eligible for unemployment benefits, you must be totally unemployed for at least one week, and be available for and seeking work. You must not refuse a suitable job offer.

In addition, your unemployment must be "involuntary." In general, that means that if you leave employment without "good cause," or if you are discharged due to your own "misconduct," you will be disqualified for benefits for a set number of weeks, although after that time you may qualify for benefits.

4. Benefits for Pregnant Women. Montana does not deny benefits solely because a woman is pregnant or was recently pregnant. However, for a pregnant woman to get unemployment insurance, she would have to meet the general requirements and eligibility tests. She must be seeking work and must be available for and able to work.

5. Duration of Benefits. The duration of benefits depends on a special formula in the Montana law. The minimum duration for eligible workers is 12 weeks and the maximum is 26 weeks. This is determined by the ratio of the total base period earnings to the earnings in the worker's highest quarter during the base period. In the example used earlier, where the highest quarter was \$2,100, and the amount for the total base period was \$3,150, the worker would receive benefits for 12 weeks.

However, if that worker had been employed at the same salary for the entire four quarters of the base period and had earned \$2,100 in each quarter, her total salary would have been \$8,400, and she would be able to receive unemployment compensation for the total 26 weeks [§39-51-2204, MCA 1978].

During certain periods of high state or national unemployment

insurance payments, there may also be an extended benefit period which adds extra weeks of insurance coverage.

6. Weekly Benefit Amount. At present, the **minimum** weekly benefit amount is 15% of the “average weekly wage,” and the **maximum** weekly benefit amount is 60% of the “average weekly wage.”

The average weekly wage is calculated each May 31, under the following formula: The sum of total wages paid by all employers who pay into the unemployment insurance system is divided by the average monthly number of individuals reported as employed during the preceding calendar year. The resulting figure is divided by 52, the number of weeks in the year, and that result is the “average weekly benefit.” Thus, 15% of that amount is the lowest possible unemployment amount to a covered applicant, and 60% is the highest.

For amounts **above** the minimum and **under** the maximum, the weekly benefit amount is one-twentysixth of a worker’s total wages for insured work during the calendar quarter of her base period in which her wages were highest, rounded to the nearest whole dollar. Thus, in the example used above, the worker who earns \$2,100 during the most highly paid quarter of her base period, would get, as her weekly benefit amount, \$81.00 [\$2,100 divided by 26 is \$80.76 (rounded to the nearest whole dollar: \$81.00)] [§ 39-51-2201, MCA 1978].

New law. After July 1, 1980, the method of computing the weekly benefit amounts above the minimum and below the maximum will change. That amount will be the total base period wages divided by the number of weeks of covered employment times 50%.

Thus, if a person worked for 30 weeks during the base period and earned \$4,200 during that period, her weekly benefit amount would be \$70. (\$4,200 divided by 30 is \$140. 50% of \$140 is \$70.)

The minimum and maximum benefit amounts remain the same under the new law.

7. To Apply for Benefits. To apply for unemployment insurance, visit your nearest local Job Service Office (Appendix A), or if you live too far away, write or telephone.

In Montana, the Employment Security Division, which is a part of the Montana Department of Labor and Industry, administers employment services, including the Job Service offices, and unemployment insurance. At the local level in Montana, these two functions are handled in the same office.

8. If You Are Denied Benefits. If you are denied unemployment benefits, you have a right to appeal that denial. Your employer also has a right to appeal, if the employer feels that you should not get benefits [§ 39-51-2402, MCA 1978]. The time limits for such appeals are quite short, so be sure to observe them very carefully. Otherwise, your appeal may be cut off entirely.

J. Other Employment Allowances

The Federal Disaster Relief Act provides assistance for communities

and businesses in areas where major natural disasters have occurred. It also provides disaster unemployment allowances in the form of weekly benefits for eligible persons whose jobs or earnings have been adversely affected by disaster. Your nearest Job Service Office should be able to answer questions about this if any area in Montana is affected by such a disaster.

The Federal Trade Act of 1974 provides special help to American workers who are totally or partially unemployed or underemployed due to competition from foreign imports. This act may provide allowances to supplement state unemployment insurance payments and other types of benefits. Your local Job Service Office should also have information about this program.

K. Union Membership

1. National Labor Relations Act (NLRA). The National Labor Relations Act (NLRA) as amended by the Labor-Management Relations Act is the major labor law in the United States. It gives employees the right to form, join, or assist labor unions; to bargain collectively through representatives of their own choosing, on wages, hours and other terms of employment; or to strike for better working conditions. It also gives the right not to join a labor union and not to participate in union activities, except where membership is required for employment.

2. Jobs Covered by Union Contracts. If membership is required for employment, you do not have to be a member of the union to be considered for the job and hired. Usually the contract between the union and the employer allows a grace period of not less than 30 days for a new non-member employee to join the union. In some cases where the job is covered by a union contract, you may not be required actually to join the union, but you may be required to pay an amount equivalent to union dues. The theory behind this requirement is that since you will benefit from union activities even if you are not a member, you should help to pay for those activities.

3. Unfair Labor Practices Under the NLRA. The NLRA defines "unfair labor practices," and prohibits such practices. Examples of unfair labor practices on the part of employers include: interference with, or restraint or coercion of employees in the exercise of the rights provided under the NLRA; dominating or interfering with the formation or administration of a union; contributing financial or other support to the union; discriminating in hiring, tenure, or terms and conditions of employment in order to encourage or discourage union membership; discharging or discriminating against an employee for filing charges or giving testimony in a case arising under the NLRA; and refusing to bargain collectively in good faith with the union.

The NLRA also prohibits unfair labor practices on the part of unions. These include: restraining or coercing workers in the exercise of their rights; requiring workers to pay membership or initiation fees that are excessive or that discriminate between members; causing an employer to

discriminate against a worker; or refusing to bargain collectively in good faith.

4. Workers Not Covered by the NLRA. The NLRA does not cover agricultural laborers, domestic workers, independent contractors, supervisors, persons subject to the Railway Labor Act, federal, state or local government employees, and certain hospital workers.

5. Further Information. For further information, write the nearest office of the National Labor Relations Board, 2948 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

6. The Federal Labor-Management Reporting and Disclosure Act. The Federal Labor-Management Reporting and Disclosure Act gives all union members equal rights in the following matters: nominating candidates for union office; voting in union elections and referendums; and participating in membership meetings. A covered union can raise fees or impose assessments only upon a majority vote by secret ballot of members in good standing. Also, all workers covered by a collective bargaining agreement must have access to a copy of the agreement. Such agreements cannot be kept secret from those they cover.

The Labor-Management Services Administration (LMSA), U.S. Department of Labor, enforces certain sections of this law. Other sections must be enforced by a private civil action in federal district court. Further information is available from the Labor-Management Services Administration, U.S. Department of Labor, Washington, D.C. 20216.

7. Montana Law. In Montana, public employees (persons employed by the state or local governments) are covered by the Montana law on collective bargaining for public employees. In general, many of its provisions are similar to those of federal collective bargaining law in terms of rights granted to organized employees [§ 39-32-101 *et seq.*, MCA 1978]. In addition, Montana also provides special collective bargaining provisions for nurses [§ 39-32-101 *et seq.*, MCA 1978].

In general, the Montana Board of Personnel Appeals, which is attached to the state Department of Labor and Industry, determines whether or not a group of public employees is an “appropriate unit” for collective bargaining purposes, and handles disputes about “exclusive representation” and other matters relating to contract negotiations, disputes over the collective bargaining agreement, and other matters requiring mediation. The board handles hearings on charges of unfair labor practices against either a collective bargaining unit or the public employer.

L. Rights of Discarded Employees

In Montana it is unlawful for any person who has fired an employee to prevent or try to prevent the employee from finding a new job [§ 39-2-802, MCA 1978]. This is one of the provisions of Montana’s “blacklisting” law.

An employee who has been fired has a right to get a written statement of reasons for the firing from the employer. This statement

must be “full, succinct, and complete.” If the employer refuses to give such statement within a reasonable time after the employee asks, then the employer cannot give **any** statement about these reasons to anyone [§ 39-2-801, MCA 1978]. For example, if you are fired and your employer refuses to give you a written statement of reasons, it is unlawful for your employer to discuss any reasons for the firing if a possible new employer calls him for a reference.

If the employer who fired you does give any reasons after refusing you the written statement, he may be guilty of a misdemeanor [§ 39-2-804, MCA 1978], and may also be liable to you for punitive damages, if you sue [§ 39-2-802, MCA 1978].

It is unlawful for the employer to say or write anything that is intended to or has the effect of preventing the employee from getting a new job. The only exception to this appears to be where the employee did not ask for a written statement of reasons for the firing, or where the employee asked and the employer gave a statement with truthful reasons. In either of these situations the employer may give truthful reasons (which should be those in the statement if a statement was given) to any person with whom the employee has applied for a new job.

“Blacklisting” is the practice of placing “undesirable” persons on a list so that they will not be hired. Blacklisting is prohibited and is punishable by the same penalties stated above [§ 39-2-803 and 804, MCA 1978].

The county attorney is responsible for enforcing the misdemeanors mentioned above. The punitive damages, however, must be sought through a lawsuit by the employee against the employer.

CHAPTER FOUR: EMPLOYMENT—RELATED RETIREMENT RIGHTS AND BENEFITS

A. Social Security Benefits Under Title II

1. Title II Coverage. The most common retirement plan is Title II of the Social Security Act, which provides the standard retirement, survivors', and disability benefits. The Title II trust fund is where your "FICA" payments go.

Title II provides retirement benefits at age 65, or as early as age 62, if you are willing to accept a reduced amount; disability benefits if you become disabled before age 65; and survivors' benefits for your dependents if you die. If you are covered under Title II, you will also be entitled to Medicare benefits.

2. Covered Workers. Approximately 9 out of 10 workers are covered by Title II of the Social Security Act, including most domestic employees and self-employed persons. Federal government employees are not covered by social security, but have their own retirement system. Coverage is optional for state governments, and Montana has elected to be covered by the system, so that employees of state government pay into both the social security program and Montana's Public Employees Retirement System (PERS).

3. Payments and Refunds. During your years of working, your employer deducts a specific percent from your paycheck, which must be matched by the employer, and this total amount paid into the social security program. These payments are not refundable even if you move from a covered job to a non-covered job, or stop working entirely. However, amounts paid into federal or state retirement systems may be refundable at your option upon leaving the system.

For self-employed persons, self-employment social security tax must be paid on net earnings when the federal income tax return is filed.

4. Required Minimum Earnings. Through the end of 1977, most employees earned a calendar quarter of credit toward coverage if they earned \$50 or more in covered jobs during that quarter. Thus, an employee could have earned as little as \$200 per year, \$50 in each calendar quarter, to get a full year of coverage counting toward social security benefits.

During that period, a self-employed person would receive four quarters for any full year in which she had \$400 or more in self-employment income.

Starting in 1978, both wages and self-employment income must be reported annually. An employee receives a quarter of coverage for each \$250 she earns in a year. In other words, she will receive four quarters of coverage, if she earns \$1000 or more during the year, regardless of the actual time of year in which she earned the money. For example, if an employee earned \$1,200 in July, 1978, but nothing in the other months of 1978, she would receive credit for all four quarters of 1978.

The \$250 earnings measure will increase each year after 1978 as the taxable wage base increases.

5. Treatment of Cash Tips. If you receive cash tips of \$20 or more per month, and work for one employer only, that amount counts toward qualifying for social security coverage, if your tips have been properly reported for social security purposes.

6. Application for Benefits. To receive social security benefits, you must apply. Contact your nearest local social security office. When you apply, the exact amount of your monthly cash benefit will be determined.

It is wise to contact your social security office up to three months before your planned retirement date, to avoid a serious delay in the processing of your checks.

7. Retirement Age. You may elect to retire at age 62 instead of 65. However, if you retire before age 65, your benefits may be reduced by as much as 20%, because based upon actuarial tables, you will receive benefits for a longer time. On the other hand, if you retire after age 65, you will get a special credit called a "bonus." This bonus is one-twelfth of one percent per month for the time you worked without receiving benefits from age 65 to 72. It is added on to your regular benefits. In 1982, the bonus will increase to an annual rate of 3%.

8. Working After Benefits Start. You may continue to work and earn income after you start receiving social security benefits. However, if you are under age 72, you will forfeit one dollar of benefits for each two dollars you earn over a specified amount.

After 1978, retirees **under** age 65 can earn up to \$3,480 without forfeiture, and retirees who are 65 to 71 can earn up to \$4,500. Persons 72 and older can earn unlimited amounts without a reduction in benefits, and in 1982 that age will be lowered to 70.

9. Retired Married Women. If you are married and employed outside your home, and if both you and your spouse worked at covered employment, you may be entitled to retirement benefits either on your own account or on your husband's as his "dependent." You will get the larger of the two amounts.

10. Widows' Benefits.

(a) **Your Account or His:** If you are a widow and your husband was covered under the social security program, you are entitled to widows' benefits. If you are retired and also covered on your own account, you will receive the larger of the amount payable on your own account and the amount your deceased husband would have received if he were still living. The amount on his account will include any credit he earned for continuing to work after age 65 without drawing benefits.

(b) **Age for Widows' Benefits:** You may start drawing widows' benefits when you are 60. However, if you draw at age 60, your benefits will be permanently reduced up to a maximum of 28½%, depending on the number of months until your 65th birthday.

As a disabled widow, you may receive benefits as early as age 50, if your disability began no later than seven years after your husband died or seven years after the end of your entitlement to benefits as a widow with children.

11. Spouse Pension “Offset.” In 1977, a provision was added to the Social Security Act which will, for persons who become eligible for social security retirement benefits as a spouse or surviving spouse, reduce the social security payment dollar for dollar by the amount of any federal, state, or local government pension payment which the retiree has herself earned in employment not covered by social security. For most women, this provision is not to be effective until 1983; for divorced women married less than 20 years and for men, it was effective in 1978. If a court holds that the law cannot distinguish between men and women in this way, the offset will become effective for women at an earlier date.

12. Benefits for Divorced Women. If you are divorced but were married to your ex-husband for at least ten years prior to your divorce, you may eligible for social security benefits on your ex-husband’s account when he retires, becomes disabled, or dies.

If you remarry while your are under age 60, your remarriage will terminate your benefit eligibility on your ex-husband’s account. If you are 60 or over when you remarry, however, you will remain eligible.

13. Title II Disability. You may be eligible for monthly benefits if you are disabled and your disability occurred before you reached the age of 65, and if your disability prevents you from working and is expected to last for at least 12 months. Your age at the time you were disabled determines how many covered quarters of work are required for eligibility.

In general, the amount of your monthly disability payment will be the same as the retirement benefit you would get if you were 65.

Under Title II disability, your payments will not start until five full calendar months after you become disabled. Apply as soon as possible, because the procedures to determine whether or not your disability meets the stiff Title II standards take some time. You can get back payments if you delay your application, but these are limited to 12 months.

14. Dependent Children. When a parent insured under Title II becomes disabled, dies, or retires, her dependent children also become eligible for benefits. Dependent children include unmarried children under 18, unmarried children between 18 and 22 who are full-time students, and unmarried children over 18 who became disabled before 22 and continue to be disabled. Your children can get benefits on your earnings record even if your husband is working.

B. Medicare

Medicare is a health insurance program for people age 65 and over who qualify under the social security or railroad retirement programs. Medicare also covers disabled persons of any age who have been eligible for or are receiving monthly cash disability benefits for 24 months or more under the Title II disability program or the railroad retirement program.

Persons insured under Title II and who need a kidney transplant, or dialysis because of chronic kidney disease may also receive those

benefits under Medicare, as may the spouses and children of insured workers.

Medicare consists of hospital insurance and medical insurance.

1. Hospital Insurance. Hospital insurance pays benefits for inpatient hospital care, for recuperation after a hospital stay in a nursing home, and for certain health services in a person's home. Most people who became 65 before 1968 are eligible for the Medicare hospital insurance, including those not fully covered for Title II social security benefits.

However, persons who turned 65 after 1968, and are not eligible for Title II social security benefits need extra quarters of work credit to qualify for Medicare hospital benefits. How many quarters are needed depends on the year a person turned 65.

Since 1976 (1975 for men), the requirement for this coverage is exactly the same as to become "fully insured" under Title II.

This program is financed by mandatory "contributions" from employers, employees, and self-employed persons. However, persons 65 and over who do not qualify under the programs above can purchase this insurance by paying a monthly premium for this and the medical insurance.

2. Medical Insurance. Medicare medical insurance pays 80% of "reasonable costs" for physicians' services, outpatient hospital services, home health services, and many other services and supplies not covered by the hospital insurance. Nearly all people entitled to the hospital insurance are automatically enrolled for the medical insurance, unless they specifically reject it during their initial enrollment period. A person may cancel the medical insurance, but may re-enroll only once.

Everyone covered by Medicare medical insurance must pay a monthly premium. This premium is lower for persons who enroll in the program at their first opportunity, and is higher for those who first reject coverage and then enroll later. It is generally under \$10 per month.

C. Social Security Information

Contact your local Social Security office for current information about Title II programs and Medicare.

D. Pensions

Many retired workers have private or other pension plans to supplement their social security benefits. Some of these are personal plans, but most are employee pension plans sponsored by employers, unions, or jointly by employers and unions.

Some pension plans are financed entirely by employers and others are financed by employers with employee contributions. Some plans are "defined benefit plans," where the amount of the benefit is fixed but the amount of contributions is not, and others are "defined contribution plans," where the amount of the contribution is fixed but the amount of the benefit is not.

1. The Employee Retirement Income Security Act (ERISA).

In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA) to protect the interests of most workers who participate in private employee pension plans and their beneficiaries. This complex law is administered by the U.S. Department of Labor, the Internal Revenue Service, and a new agency called the Pension Benefit Guaranty Corporation.

ERISA sets standards on plan funding and transactions with plan assets; employee participation; formulas for accumulating pension credits (benefit accrual); vesting, protection for survivors; reporting and disclosure.

ERISA does not require companies to establish pension plans, and it does not set benefit levels. However, it does set up an insurance system for certain pension plans to assure that they do not terminate without paying benefits. It also prohibits employers from firing workers in order to avoid paying pension benefits.

ERISA also authorizes workers who are not participating in a qualified pension, profit-sharing, or similar plan, to defer taxes on their own contributions toward individual retirement accounts (IRA's), which are personal pension plans.

ERISA allows self-employed persons to set aside each year either \$7,500 or 15% of their earned income, whichever is less for a "Keogh plan."

2. Company Plans. Under ERISA, your employer cannot refuse to let you participate in a "defined contribution plan" (one in which the amount of contributions is fixed but the amount of benefit is not) because you started working late in life. However, you may be denied participation in a "defined benefit plan" (one in which the benefit amount is fixed but the amount of contribution is not) if you are within five years of the plan's normal retirement age when you begin work.

3. Vesting. In general, "accrued benefits" are sums of money which are payable to you or your family as plan benefits because of your own cash contributions to the plan, and/or your employer's contributions on your behalf.

Your accrued benefits are "vested" at the time you receive a nonforfeitable right to receive the benefits at retirement, even if you leave your job before retirement age.

ERISA provides that benefits accrued from your own contributions to the plan must vest fully and immediately. Also, if you are employed under a pension plan at the time you reach the "normal retirement age" under the plan, all your accrued benefits must be fully vested.

ERISA attempts to provide some protection of benefits accrued from employers' contributions, for persons who leave a job before retiring. For this reason, ERISA requires that accrued benefits vest at least as fast as one of the following schedules:

(a) 100% vested after 10 years of service [but no vesting before completion of 10 years of service];

(b) 25% vested after 5 years of service, with 5% annual increases for the next 5 years and 10% annual increases thereafter; or

(c) 50% vested after 5 years when the sum of your age and years of service equals 45, with 10% increases in each of the next 5 years (however, regardless of age, 50% vesting after 10 years of service and 10% more for each additional year of service).

Certain periods of service may be disregarded, for purposes of determining when accrued benefits vest. For example, years of service before age 22 may be disregarded.

Under the first two vesting schedules above, ERISA has also limited the circumstances where an employee will lose accrued benefits because of a break in service. For example, a plan cannot penalize participants for a break in service, as defined by ERISA, that is shorter than 1 year. The effects of breaks in service depend upon the type of plan, whether accrued benefits have vested, and how long the break is, compared with the length of service under the plan before the break.

4. Transferring Vested Pension Benefits. If you change jobs after your pension benefits vest, you can transfer your benefits from your old employer's plan to your new employer's plan, under certain circumstances.

If you receive a lump sum payout of vested benefits because you leave before retirement or your plan is terminated, you can avoid current taxes by depositing the funds in an individual retirement account (IRA), even though you may not otherwise be eligible for an IRA. You may also have this sum transferred to a new employer's pension plan, if the plan allows it and certain other requirements are met.

5. Survivor Protection. Some retirement plans pay benefits in the form of an annuity. An annuity is a payment of a fixed amount paid at regular intervals and for a set period of time or for life.

If your plan pays annuities and you are married, your plan may provide some income for your husband in the event of your death. In general, this type of plan must provide "joint and survivor" benefits at the plan's normal retirement age, provided that the employee does not retire before she reaches that age. These benefits should be automatic, unless the employee rejects them in writing.

Your own benefit amount can be reduced somewhat in order to get the joint and survivor benefit. Also, if you are eligible for early retirement but decide to keep working, you may have to elect the survivor annuity in writing to make sure that you have survivor coverage while you are still on the job.

6. Plan Termination Insurance. ERISA created a federally chartered insurance program to protect the vested pension benefits of employees in certain defined pension benefit plans. The plans must pay annual premiums based on the number of participants. When a covered plan terminates without enough assets to meet its pension obligations, a government corporation becomes a trustee for the plan and administers benefit payments, manages plan assets, and contributes additional funds up to a statutory limit.

7. Your Right to Information. You and your family should know the details of your pension plan and any other employee benefit plan, such as health insurance, death or disability insurance, sick leave, vacation leave, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services, and any others.

ERISA requires administrators of plans covered by the law to furnish participants and beneficiaries summary descriptions of what the plans provide and how they operate.

This description must be written in language that most people can understand. It also must be accurate and comprehensive enough to give the participant a reasonable understanding of her plan rights and obligations.

If you are a plan participant, you are entitled to a summary of the plan's annual financial report.

You are also entitled to get a statement from the plan, as often as once during each 12 month period, setting out your total accrued benefits and your total vested benefits, or the earliest date on which your benefits will vest. This request must be in writing.

Under ERISA, some documents must be furnished to you automatically, some must be furnished upon your request and must be provided either free or at a reasonable charge, and some must be available to you at the principal office of the plan's administrator and certain other places.

8. Further Information. For further information about your pension plan, contact your employer's personnel officer, your supervisor, your employee representative, or other person who should have this information.

You may obtain further information on your rights as a pension plan participant and on what protections you may have in the event your plan is terminated, from the Labor-Management Services Administration, U.S. Department of Labor, Washington, D.C. 20216 [pension rights], and from the Pension Benefit Guaranty Corporation, 2020 K Street N.W., Washington, D.C. 20006 [termination protections].

E. Personal Plans

1. "Keogh Plans" for the Self-Employed. Persons who are self-employed may put a part of their earned income each year into a fund that can earn tax-free income until it starts paying out at retirement. An additional benefit of this type of "Keogh plan" is that income tax is deferred on contributions to the fund until the payout. Thus, this type of plan reduces the amount of earned income on which the person must pay current income tax, delaying that until a time when the total income is likely to be less. The contribution limit on a Keogh plan is \$7,500 or 15% of earned income, whichever is less.

2. Individual Retirement Accounts (IRA's). If you are working but not an "active participant" during the year in a tax-qualified corporate plan, tax-deferred annuity program, Keogh plan, or

governmental retirement plan, you can set up an individual retirement account (IRA).

(a) **Funding an IRA:** Your IRA is funded by your own contributions, and if your husband is not employed you may also make contributions for him.

(b) **IRA Contribution Limits:** You can set aside up to 15% of your earnings for your IRA, up to \$1,500 a year for just yourself, or \$1,750 for both yourself and your unemployed husband.

If you and your husband are each eligible for IRA's, you can each contribute 15% of your earnings, to a maximum of \$1,500 apiece, annually, in your own separate IRA's.

If you and your husband set up a joint IRA, however, then each of you must contribute an equal amount to the joint IRA, up to a maximum of \$875 each, for an annual total of \$1,750. For example, you may each contribute \$200 per year, for an annual total of \$400. Or, to reach the maximum, you may each contribute \$875. However, you may not make unequal contributions of any amount. For example, you cannot pay in \$1,500 and have your husband pay in \$250, even though the total amount is within the maximum allowable.

(c) **Federal Taxation of IRA's:** Tax is deferred on contributions to and earnings of IRA's until these funds are withdrawn as retirement benefits. You must begin drawing IRA benefits no later than age 70½. Generally, you are subject to a tax penalty if you begin withdrawing before age 59½.

(d) **Investment of IRA Funds:** Funds in IRA's must be invested in one of three ways: special retirement annuities that do not begin paying out until you have reached a specified age after 59½; a special type of U.S. Treasury bond; or a trust administered by a bank or other approved institution.

You may establish more than one IRA, either within a single year or over a period of years, as long as your combined contributions do not exceed the annual limits. Your separate IRA's may be in different investment forms.

(e) **Transfers and "Rollovers":** Once a year you may, if you wish, withdraw funds from one IRA and, within 60 days, transfer them tax-free to another IRA. Tax-free "rollovers" are also permitted from an IRA to a qualified retirement plan and from a qualified retirement plan to an IRA.

If you receive a lump sum payout from a prior pension plan because you left a job before retirement or because your plan was terminated, and you set up one IRA with that payment, the annual IRA contribution limits do not apply.

3. Montana Public Employee's Deferred Compensation Plan. Since 1974, Montana has allowed the setting up of deferred compensation funds. Public employees may pay part of their salaries into such a fund, and tax is deferred until the time for payout [§ 19-2-101 *et seq.*, MCA 1978].

4. Further Information. Tax Information on self-employed

retirement plans and IRA's is available from your nearest Internal Revenue Service office or from the Internal Revenue Service headquarters, U.S. Department of the Treasury, Washington, D.C. 20226.

You can get a "Buyer's Guide" on IRA's from the Federal Trade Commission, Washington, D.C. 20580. The Pension Benefit Guaranty Corporation, 2020 K Street N. W., Washington, D.C. 20006, can give you advice on whether an IRA might suit your retirement plan needs.

For further information on Montana's deferred compensation program for public employees, contact the Insurance and Legal Division, Montana Department of Administration, Room 203, Sam W. Mitchell Building, Helena, Montana 59601 [(406) 449-2421].

F. Montana Public Employee Retirement Plans

1. Public Employees' Retirement System. Most public employees in the state of Montana are covered by state-run retirement plans. The largest of these is the Public Employees' Retirement System (PERS), which covers most state employees, and many employees of local governments which have elected to come into the system [§ 19-3-101, *et seq.*, MCA 1978].

2. Other Public Employee Plans. Montana also has separate statewide retirement systems for teachers [Title 19, Chapter 5, MCA 1978]; highway patrol [Title 19, Chapter 6, MCA 1978]; sheriffs [Title 19, Chapter 7, MCA 1978]; game wardens [Title 19, Chapter 8, MCA 1978]; police state and local systems) [Title 19, Chapter 9 and 10, MCA 1978]; and firefighters [Title 19, Chapter 11 and 12, MCA 1978].

3. Further Information. The plans are all administered by the Public Employees' Retirement Division, Montana Department of Administration, 1712 Ninth Avenue, Helena, Montana 59601 [(406) 449-3154].

For further information, contact your employer's personnel office, your supervisor, your employee representative or the Public Employees' Retirement Division.

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APPENDIX A

LOCAL JOB SERVICE OFFICES

Job Service Office
307 East Park
Anaconda, Montana 59711
563-3444

Job Service Office
Billings East
624 N. 24th Street
Billings, Montana 59101
248-7371

Job Service Office
Billings West
445 S. 24th Street W.
Billings, Montana 59102
652-2920

Job Service Office
220 W. Lamme
Bozeman, Montana 59715
586-5455

Job Service Office
206 W. Granite
P.O. Box 309
Butte, Montana 59701
792-0417

Job Service Office
513 East Main Street
Cut Bank, Montana 59427
873-2191

Job Service Office
126 S. Montana St.
Dillon, Montana 59725
683-5501

Job Service Office
238 Second Ave. S.
Glasgow, Montana 59230
228-9369

Job Service Office
211 S. Kendrick
Glendive, Montana 59330
365-3314

Job Service Office
1018 7th St. S.
Great Falls, Montana 59405
761-1730

Job Service Office
333 Main Street
P.O. Box 73
Hamilton, Montana 59840
363-1822

Job Service Office
416 First Street
Havre, Montana 59501
265-4366

Job Service Office
715 Front Street
Helena, Montana 59601
449-3044

Job Service Office
427 First Ave. E.
Kalispell, Montana 59901
755-5071

Job Service Office
324 W. Broadway
Lewistown, Montana 59457
538-8701

Job Service Office
314 California Ave.
Libby, Montana 59923
293-6282

Job Service Office
228 South Main
P.O. Box 1199
Livingston, Montana 59047
222-0520

Job Service Office
12 North 10th St.
Miles City, Montana 59301
232-1316

Job Service Office
539 S. Third St. W.
P.O. Box 5027
Missoula, Montana 59806
728-7060

Job Service Office
417 Main Street
P.O. Box 970
Polson, Montana 59860
883-5261

Job Service Office
402 First St. S.
Shelby, Montana 59474
434-5161

Job Service Office
120 South Central
Sidney, Montana 59270
482-1204

Job Service Office
608 Main Street
P.O. Box 669
Thompson Falls, Montana 59873
827-3472

Job Service Office
122 Second Ave. S.
Wolf Point, Montana 59201
653-1720

Telephone Area Code (406)

APPENDIX B

LOCAL VO-TECH CENTERS

Mr. Alex Capdeville, Director
Helena Vo-Tech Center
1115 Roberts Street
Helena, Montana 59601

Mr. Thomas E. Downey, Director
Missoula Technical Center
909 South Avenue West
Missoula, Montana 59801

Mr. Glenn Burgess, Director
Billings Vo-Tech Center
3803 Central
Billings, Montana 59102

Mr. Harry Freebourn, Director
Butte Vo-Tech Center
404 South Wyoming
Butte, Montana 59701

Mr. James Carey, Director
Great Falls Vo-Tech Center
2100 Sixteenth Avenue South
Great Falls, Montana 59405

APPENDIX C

STATE AGENCIES

Apprenticeship Bureau
Montana Department of Labor
and Industry
35 South Last Chance Gulch
Helena, Montana 59601
(406) 449-5600

Board of Personnel Appeal
Montana Department of Labor
and Industry
35 South Last Chance Gulch
Helena, Montana 59601
(406) 449-5600

Citizen Advocate
Office of the Governor
State Capitol Building
Helena, Montana 59601
(406) 449-3468
Toll free number 1-800-332-2272

Commissioner of Labor and
Industry
35 South Last Chance Gulch
Helena, Montana 59601
(406) 449-2612

Employment Security Division
Montana Department of Labor
and Industry
Room 101, Employment
Security Bldg.
Lockey and Roberts
Helena, Montana 59601
(406) 449-3662

Human Rights Division
(and Human Rights
Commission)
Montana Department of Labor
and Industry
Suite 300, Steamboat Block
616 Helena Avenue
Helena, Montana 59601
(406) 449-2884

Insurance and Legal Division
Montana Department of
Administration
Room 203, Mitchell Building
Helena, Montana 59601
(406) 449-2421

Labor Standards Division
Montana Department of Labor
and Industry
35 Last Chance Gulch
Helena, Montana 59601
(406) 449-5600

Montana Department of Health
and Environmental Services
Room 200, Cogswell Building
Helena, Montana 59601
(406) 449-2544

Public Employees' Retirement
Division
Montana Department of
Administration
1712 Ninth Avenue
Helena, Montana 59601
(406) 449-3154

Veterans' Employment Service
Montana Department of Labor
and Industry
600 North Cooke
Helena, Montana 59601
(406) 449-2062

Women's Bureau
Montana Department of Labor
and Industry
35 South Last Chance Gulch
Helena, Montana 59601
(406) 449-5600

Workers' Compensation Division
Montana Department of Labor
and Industry
815 Front Street
Helena, Montana 59601
(406) 449-2047

APPENDIX D

FEDERAL AGENCIES

Bureau of Apprenticeship and
Training

Employment and Training
Administration

U.S. Department of Labor
Washington, D.C. 20213

Equal Employment Opportunity
Commission

Region VIII: 1845 Sherman
Street, Second Floor
Denver, Colorado 80203
National: Washington, D.C.
20506

Labor-Management Services
Division

U.S. Department of Labor
Washington, D.C. 20216

National Labor Relations Board
2948 Federal Building
915 Second Avenue
Seattle, Washington 98174

Occupational Safety and Health
Administration

U.S. Department of Labor
Washington, D.C. 20210

Office of Federal Contract
Compliance Programs
Employment Standards
Administration

U.S. Department of Labor
Washington, D.C. 20210

Office of Interagency
Coordination

Equal Employment Opportunity
Commission

Washington, D.C. 20506

(Where to seek assistance if you
you believe another federal
agency has not handled your
complaint properly)

Pension Benefit Guaranty
Corporation

2020 K Street, N.W.
Washington, D.C. 20006

Regional Administrator
Employment and Training
Administration

U.S. Department of Labor
1961 Stout Street

Denver, Colorado 80202

For complaints on state
employment services, un-
employment benefits, or CETA
programs)

Wage and Hour Division
Employment Standards

Administration

U.S. Department of Labor
125 South State Street, Room 4311
Salt Lake City, Utah 84138

Women's Bureau

Office of the Secretary

U.S. Department of Labor
Washington, D.C. 20210

APPENDIX E

MONTANA HUMAN RIGHTS COMMISSION SAMPLE COMPLAINT FORM

COMPLAINT OF DISCRIMINATION

DATE FILED _____

CASE NO. _____

INSTRUCTIONS: If you believe you have been discriminated against, fill in this form as completely as possible

Mail to Human Rights Commission
404 Power Block
Helena MT 59601

Cause of Discrimination

- ☐ Creed or Religion
☐ Age
☐ Sex
☐ Race, national origin, or color
☐ Handicap, physical or mental
☐ Political belief (state only)
☐ Marital Status

Area of Discrimination

- ☐ Employment
☐ Training or education
☐ Housing
☐ Public accommodations
☐ Financing
☐ Government services
☐ Retaliation (for Human Rights activity)

Complainant's Name (Indicate Mr or Ms) _____

Age _____

Address _____

Telephone No _____

Social Security No _____

Street or Box No., City, Zip Code _____

The following person always knows where to contact me

Name (Indicate Mr or Ms) _____

Address _____

Telephone No _____

Street or Box No., City, Zip Code _____

The person, employer, organization or agency who, I believe, discriminated against me is

Name _____

Address _____

Telephone No _____

Type of Organization _____

City, County, Zip Code _____

Date Most Recent or Continuing
Discrimination Took Place _____

If action has been sought through any
other agency give name and address _____

(Month, Day, Year)

Explain as fully as possible how you believe you were discriminated against with as many details and statements of fact as you can provide. If more space is needed attach additional pages

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

Your Signature

Subscribed and sworn to before me

this _____ day of _____, 197 _____

Notary Public for the State of

Montana, Residing at _____

My Commission expires _____

PROVISIONS PROHIBITING RETALIATION

Section 64-306 (8), R C M 1947, states

It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

Section 64-312, R C M 1947, states

Unlawful to violate act—penalty. (1) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this act or to attempt to do so

(2) No person or institution may discharge or discriminate against any other person because he or she has made a complaint, assisted with an investigation or proceeding under this act or in any other manner opposed any practice made unlawful under this act

(3) A person, employer, business, organization, corporation or agency, both public and private, who or which willfully engages in an unlawful discriminatory practice prohibited by this act or willfully resists, prevents, impedes, or interferes with the commission, the department or any of its authorized representatives in the performance of duty under this act or who or which willfully violates an order of the commission or violates this act in any other manner, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION SAMPLE COMPLAINT FORM

(PLEASE PRINT OR TYPE)

APPROVED BY GAO B—180541 (RO512) Expires 1-31-81	CHARGE OF DISCRIMINATION IMPORTANT: This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing it.	CHARGE NUMBER(S) (AGENCY USE ONLY) <input type="checkbox"/> STATE/LOCAL AGENCY <input type="checkbox"/> EEOC
--	---	--

_____ and Equal Employment Opportunity Commission	
(State or Local Agency)	
NAME (Indicate Mr., Ms. or Mrs.)	HOME TELEPHONE NUMBER (Include area code)
STREET ADDRESS	
CITY, STATE, AND ZIP CODE	COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).	
NAME	TELEPHONE NUMBER (Include area code)
STREET ADDRESS	CITY, STATE, AND ZIP CODE

NAME	TELEPHONE NUMBER (Include area code)
STREET ADDRESS	CITY, STATE, AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON MY (Check appropriate box(es))

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ OTHER (Specify)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)

THE PARTICULARS ARE:

<input type="checkbox"/> I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief
	SIGNATURE OF COMPLAINANT
	SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
I declare under penalty of perjury that the foregoing is true and correct.	NOTARY — (When necessary to meet State and Local Requirements)
DATE:	
CHARGING PARTY (Signature)	

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